



16 JUN 2009

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In re Application of POUTCH et al	:	
U.S. Application No.: 10/584,888	:	
PCT Application No.: PCT/FR2004/003416	:	
Int. Filing Date: 30 December 2004	:	DECISION
Priority Date Claimed: 31 December 2003	:	
Attorney Docket No.: POUTCH 1	:	
For: EXPANDED POLYSTYRENE	:	
SOLUBILISATION METHOD	:	

This is in response to applicant's petition under 37 CFR 1.181 filed 27 April 2009.

BACKGROUND

On 30 December 2004, applicant filed international application PCT/FR2004/003416, which claimed priority of an earlier France application filed 31 December 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 11 August 2005. The thirty-month period for paying the basic national fee in the United States expired on 30 June 2006.

On 29 June 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 20 February 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905)¹, which indicated that an English translation of the international application and an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 03 July 2008, the DO/EO/US mailed a Notification Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to timely reply to the Notification of Missing Requirements.

¹ Copy attached.

On 27 April 2009, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

MPEP 711.03(c), Section I. A., "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" states in relevant part,

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The petition states that the Notification of Missing Requirements was never received and that a search of the practitioner's records, including any file jacket or equivalent, revealed that the Notification of Missing Requirements was not received. Furthermore, the petition includes a description of the firm's system for recording an Office action received at the correspondence address of record, establishing that the system is sufficiently reliable. In addition, the petition includes a copy of the practitioner's docket record, showing all replies docketed for 20 April 2007, the date a response to the Notification of Missing Requirements was due. Such docket record shows no entry for the present application. Thus, it can be concluded with reasonable certainty that the Notification of Missing Requirements was never received.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The Notification Abandonment (Form PCT/DO/EO/909) mailed 03 July 2008 is hereby VACATED.

The period for response to the Notification of Missing Requirements is hereby restarted as of the date of mailing of this decision. Accordingly, a proper reply to the Notification of Missing Requirements must be filed within TWO (2) MONTHS from the mailing date of this decision. Failure to timely file a proper reply will result in ABANDONMENT of the application. Extensions of time under 37 CFR 1.136(a) are available.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

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ATTACHMENT: copy of Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905)